

## **Chapter 09 Motion Picture Production Tax Incentive**

### **100 Definitions**

- 101 A motion picture production company (MPPC) is one that produces a nationally distributed motion picture, video, DVD, television program or series, commercial, or computer or video game. This includes a company engaged in the business of making such productions through the use of animation, interactive media, preproduction and postproduction 3D applications, video game cinematics, virtual production, visual effects, and motion capture within the fields of feature film, television, commercials and games. The production of news or athletic events do not qualify, nor does any project that contains any material or performance deemed obscene as defined in Miss. Code Ann. Section 97-29-103. The company cannot have defaulted on any state loan or have declared bankruptcy where a state obligation had been discharged because of the bankruptcy.
- 102 A Mississippi vendor is a business that either owns an office building in Mississippi or has signed a lease for office space in Mississippi for at least a year, has at least one employee stationed full time at the Mississippi office, is known in the trade as a vendor active in the relevant line of business and advertises as a Mississippi vendor.
- 103 An employee is defined as an individual directly involved in the physical production and/or post-production of a motion picture produced in this state and who is employed by a MPPC, personal service corporation or loan out company.
- 104 Payroll is defined as salary, wages or other compensation including related benefits paid to employees upon which Mississippi income tax is due and has been withheld.
- 105 Fringes means costs paid by a MPPC on or after September 1, 2013, for employee benefits that are not subject to state income tax. Fringes may include, but are not limited to, payments by an employer for unemployment insurance, Federal Insurance Contribution Act (FICA), workers' compensation insurance, pension and welfare benefits and health insurance premiums.
- 106 A Mississippi resident is defined as a person domiciled in Mississippi or who has maintained a permanent home in this state and spends in the aggregate more than six (6) months each year within the state. Proof of domicile or maintenance of a permanent home includes: valid Mississippi driver's license, Mississippi voter registration, valid Mississippi car tag, and current Mississippi property taxes or homestead exemption.

107 (Reserved)

### **200 General**

- 201 The Motion Picture Production Tax rebate is based on the amount of the base investment made in Mississippi and Mississippi resident and nonresident employee payroll and fringes as defined in Miss. Code Ann. Section 57-89-3. The rebate is available for a MPPC that expends at least \$50,000 in base investment, payroll and/or fringes, in this state on a

production certified by the Mississippi Development Authority. The amount of the rebate is twenty-five percent (25%) of the base investment made and expended in this state. Payroll and fringes for a Mississippi resident is eligible for a thirty percent (30%) rebate and payroll for a non-resident is eligible for a twenty-five percent (25%) rebate. An additional five percent (5%) rebate is available for payroll of honorably discharged veterans. Purchases made before the MDA approval date are not included in the rebate. Only eligible expenses purchased directly by the MPPC certified for the incentive will be allowed for the rebate.

- 202 The total amount of rebates authorized for a motion picture production will not exceed \$10,000,000 in the aggregate and the total amount of rebates authorized in any fiscal year will not exceed \$20,000,000 in the aggregate.
- 203 A MPPC is responsible for registering with the proper state authorities to legally conduct business within this state. This includes the Mississippi Department of Employment Security, Mississippi Worker's Compensation Commission, Mississippi Secretary of State, etc.
- 204 A MPPC is responsible for registering for a withholding tax account and reporting any withholding tax due on this account.
- 205 (Reserved)
- 300 Base Investment
- 301 Base investment includes purchases of goods and services from Mississippi vendors, as defined above, housing, housing allowances, food, rental of equipment, dry cleaning, per diem and anything else that the MPPC actually spends in Mississippi that is related to the production.
- 302 Purchases of services and tangible personal property must be made from a Mississippi Vendor, as defined above, in order to qualify for the rebate. Payments made to out of state independent contractors or vendors for tangible personal property and services do not qualify for the rebate. Purchases of services from a vendor must satisfy the following five criteria to be eligible for the rebate:
1. The vendor must qualify as a Mississippi vendor;
  2. The service must be wholly performed in this state;
  3. The payment may not be for a qualified personnel expenditure;
  4. The service must be directly attributable to the production; and
  5. The transaction must be subject to taxation in this state.
- 303 Items that do not qualify as base investment:
1. Online Purchases, regardless if Mississippi sales tax is charged.
  2. Postage
  3. Mileage
  4. Bank fees
  5. Credit Card fees

6. Taxes
  7. Personal Expenditures
  8. Out of state expenses billed through a Mississippi pass through company.
  9. Any other items that do not meet the definition of base investment.
- 304 Airline tickets must be purchased through a Mississippi travel agent and the sales invoice must indicate the airports in which the flight departed and arrived. Airports located in Mississippi or one of the following cities are eligible for the rebate:
1. Memphis, TN
  2. New Orleans, LA
  3. Baton Rouge, LA
  4. Mobile, AL
- 305 Location rentals for housing or a set should include the Vendor/Owner name, address of the rental property, description of use, dates used, and a copy of payment.
- 306 Items purchased during production that are sold in Mississippi at the end of production must be decreased by the sales price of the item before being included in the rebate.
- 307 Contract labor paid to a Mississippi resident is eligible for a twenty-five percent (25%) rebate, while non-resident contract labor is not eligible for the rebate. A rebate request for contract labor should include the name of the individual, city of residence, social security number, copy of payment and a link to an image of Form 1099, if applicable, journals and any other supporting documentation.
- 308 Purchases of property or services from a local vendor who has acquired the property or services from out of state may qualify for the rebate if:
1. The Mississippi vendor is regularly engaged in the business of providing that same type of good or service.
  2. The Mississippi vendor is a permanent business enterprise; and
  3. The Mississippi vendor's sales to the motion picture production company are at an arm's length basis as evidenced by an added markup that is consistent with industry norms. The MPPC must not provide any assistance to the local vendor in providing the services or tangible personal property.
- 309 The use of a local production company to provide goods and services may also qualify for the rebate as long as the local production company meets the requirements in Paragraph 308 above and the company was not established specifically for the needs of any one production.
- 310 Employee reimbursements do not qualify for the rebate. Petty cash is not specifically allowed under Miss Code Ann. Section 57-89-1 et seq. but may be allowed as a convenience to the MPPC by the Mississippi Department of Revenue (MDOR). Petty cash expenses may qualify for the rebate if documentation of a petty cash accounting system is provided in the rebate request along with copies of invoices and payment information. Examples of petty cash expenses that may qualify for the rebate include meals, gas, office supplies, set design, art department expenses and other similar production related expenses.

311 (Reserved)

#### 400 Payroll

401 If the eligible production has physical production or post production activities both inside and outside the state, the rebate will only be allowed on a prorated amount of the eligible payroll based on the percentage of activities performed in Mississippi. Source documentation should include a journal indicating time worked between states.

402 An individual who is hired through a loan out company or a temporary staffing company will be considered an employee if the loan out company or temporary staffing company is withholding Mississippi tax, otherwise, the individual will be treated as a contract employee. Loan out companies will be able to claim the withholding as an estimated payment on their Mississippi income tax return. Loan out companies must contact the MDOR before filing the return to ensure that there will not be a delay or problem in regards to the withholding being claimed as an estimated payment.

403 Payments made to personal service corporations may qualify for the rebate as long as Mississippi income tax has been withheld and remitted.

404 Payroll fees paid to Mississippi payroll companies qualify for the rebate.

405 If the payroll and fringes paid for an employee exceeds \$5,000,000, then the rebate is only authorized for the first \$5,000,000 of the single employee's payroll and fringes.

406 The production company may receive an additional 5% of the wages payroll and fringes paid for an employee who is an honorably discharged veteran of the United States Armed Forces upon which Mississippi income tax is due and has been withheld. A copy of Federal Form DD 214 Proof of Military Service is required to qualify for the additional 5%.

407 (Reserved)

#### 500 Rebate Request Submission

501 To claim the rebate, the motion picture company must submit an electronic Excel spreadsheet upon completion of the project containing a detailed accounting of the base investment and the employee payroll to the MDOR.

502 The base investment tab must include a listing of purchase invoices showing the name and address of the vendor, date, description of items purchased and the amount of expenditures made to those vendors. Proper documentation to prove payment by the MPPC that was certified for the rebate is also required. This includes copies of bank statements, credit card statements and any other form of payment used to purchase items eligible for the rebate. The appropriate stage of production in which the purchase was made should also be indicated: Preproduction, Production or Post Production. Each location should be grouped together by date for productions that take place in more than one location.

- 503 The payroll tab should list both residents and non-residents of Mississippi, including social security numbers, names, addresses, and a breakdown of the amount of wages paid to and withheld from those individuals. The payroll documentation should include a payroll detail with a breakdown of employee benefits and employer fringes by employee, copies of W-2s, and copies of 1099s.
- 504 Both tabs of the spreadsheet must contain links to pdf images of all source documentation contained in the rebate request. Links to internet drop boxes will not be accepted. All source documentation must be kept for verification and additional documentation may be requested. The MDOR conducts a line-by-line review of the spreadsheet submission. The rebate request Excel spreadsheet and pdf images are to be submitted on a flash drive and mailed to: Mississippi Department of Revenue, Office of Tax Policy, and P.O. Box 22828, Jackson, MS 39225. After reviewing and approving the rebate request, the MDOR will issue the rebate check to the certified production company. The rebate check is not transferrable.
- 505 The rebate will be paid with one check once all of the expenses in the rebate request have been received and reviewed.
- 506 (Reserved)